TAB 8

QESTIONS AND ANSWERS

U.S. Office of Personnel Management

Frequently Asked Questions About Leave

Annual Leave - Conditions for Restoration

Q - Can forfeited annual leave be restored?

A - Yes, in certain situations. Annual leave that was forfeited because it was in excess of the maximum amount permitted for carry over into the next leave year may be restored because of an administrative error, exigency of the public business, or sickness of the employee. The annual leave must be restored in a separate leave account. Leave that is forfeited because of an exigency of the public business or sickness of the employee may be considered for restoration only if the annual leave **was scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.** (See 5 CFR 630.308.)

The determination as to what constitutes an administrative error is the responsibility of the employing agency. A determination that an exigency is of major importance and that excess annual leave cannot be used must be made by the head of the agency or his or her designee.

Annual Leave - Forfeiture of Restored Leave

Q - Can restored leave that is not used within the established time limits be restored a second time?

A - No. The Comptroller General has ruled consistently that if restored leave is forfeited again, there is no legal authority for its further restoration. Any restored leave unused at the expiration of the established time limits is again forfeited with no further right to restoration. In addition, administrative error may not serve as the basis to extend the time limit for using restored annual leave. This is so even if the agency fails to establish a separate leave account, fix the date for the expiration of the time limit, or properly advise the employee regarding the rules for using restored annual leave absent agency regulations requiring otherwise. (See Comptroller General opinions B-188993, December 12, 1977; B-213380, August 20, 1984; and B-256975, October 11, 1994.)

Annual Leave - Time Limits on Restored Leave

Q - What are the time limits for using restored leave?

A - Restored annual leave must be scheduled and used not later than the end of the leave year ending 2 years after --

- the date of restoration of the annual leave forfeited because of administrative error;
- the date fixed by the head of the agency or designee as the date of termination of the exigency of the public business; **or**
- the date the employee is determined to be recovered and able to return to duty.

The above limitations do not apply to Department of Defense employees at installations undergoing closure or realignment. (See 5 CFR 630.306(b).)

The time limits for using annual leave restored because of an "extended" exigency are found in 5 CFR 630.309.

Annual Leave - Use of Annual Leave to Qualify for Retirement

Q - My agency is undergoing downsizing, and I received a reduction-in-force (RIF) notice and will be terminated on September 15. I would have been eligible for retirement on November 1. Is there any way I can stay on the rolls until November 1 and qualify for retirement?

A - Yes. An employee who has received a RIF notice and is being involuntarily separated from an agency due to reduction in force or transfer of function may elect to use annual leave and remain on the agency's rolls after the date the employee otherwise would have been separated in order to establish initial eligibility for immediate retirement, including discontinued service or voluntary early retirement. The same option is also available to acquire eligibility to continue health benefits into retirement.

In addition, an employee who is being involuntarily separated under adverse action procedures because of his or her decision to decline relocation (including transfer of function) may use annual leave to remain on the agency's rolls after the effective date of the relocation to establish initial eligibility for immediate retirement (including discontinued service or voluntary early retirement) and/or to establish initial eligibility to continue health benefits coverage into retirement.

For further information, contact your agency personnel office or retirement counselor.

Bone Marrow/ Organ Donation Leave

Q - I will be undergoing a procedure that involves the removal of my bone marrow for future use in my own medical treatment. May I use Bone Marrow/Organ Donation leave for those days that I am absent from work for the removal of my bone marrow?

A - The legislative history regarding leave for bone marrow/organ transplantation leave makes clear that the intent of legislation was to encourage the registration and donation of bone marrow by individuals who might not otherwise donate. It was hoped that providing such an incentive to Federal workers to be bone marrow donors would increase the size and diversity of the donor registry. It was felt that Federal workers should not be required to use their own leave to *save the life of another person*. There was no intent that this leave be a benefit to the donor.

An individual having bone marrow removed and stored for future use is not a "donor," and the benefit of 7 days of paid time off was not intended for someone who is undergoing such a procedure for his or her own needs. Sick leave, annual leave, and advanced annual and sick leave are available to an employee facing this type of medical procedure. In addition, leave donated under the Federal leave sharing program and leave without pay under the Family and Medical Leave Act may be used if the condition meets the requirements of these programs.

Family and Medical Leave - Appeal Rights

Q - What are my appeal rights under the Family and Medical Leave Act?

A - If an employee believes an agency has not fully complied with the rights and requirements provided by Title II of the Family and Medical Leave Act and the Office of Personnel Management's implementing regulations at 5 CFR 630.1201 through 630.1211, the employee may file a grievance under applicable agency administrative procedures or negotiated grievance procedures. For more information about initiating a grievance in your agency, contact your servicing personnel office or a representative of the labor organization representing you.

Family and Medical Leave - Chronic Conditions

Q - If an employee has been approved for intermittent leave under the Family and Medical Leave Act of 1993 to care for a child with a chronic condition, may an agency request documentation that the intermittent absences are being used for FMLA purposes?

A -Typically, an agency may require recertification of a serious health condition every 30 calendar days. However, if the agency receives information that casts doubt upon the continuing validity of the original medical certification, including the need for care, it may require recertification more frequently. In addition, the agency may also require an employee to state on the medical recertification the care he or she will provide and an estimate of the amount of time needed to provide such care. (See 5 CFR 630.1207(b)(4)(ii).) To assist agencies and employees, OPM's regulations also allow a health care provider representing the agency to contact the health care provider of the employee, with the employee's permission, to clarify medical information pertaining to the serious health condition. (See 5 CFR 630.1207(c).)

Family and Medical Leave - Disability Retirement

Q - May an employee who has requested approval of his or her application for disability retirement use leave under the Family and Medical Leave Act of 1993?

A - Yes. Under the Family and Medical Leave Act of 1993 (FMLA), a covered employee is entitled to a total of 12 workweeks of unpaid leave during any 12-month period for certain family and medical needs, including the serious health condition of an employee. An employee may substitute annual leave or sick leave for any or all of the period of unpaid leave, consistent with current law and regulations. An employee awaiting approval of his or her request for disability retirement is entitled to use any or all of the 12 workweeks of leave under the FMLA, if he or she continues to meet the requirements and obligations under the FMLA.

Employees should contact their agency personnel offices to receive additional information on their entitlements and responsibilities under the Family and Medical Leave Act of 1993.

Family and Medical Leave - Entitlement

Q - I have been told that I must maintain 80 hours of sick leave in my account in order to use leave under the Family and Medical Leave Act. Is that correct?

A - There appears to be confusion as to the entitlements and requirements under the Family and Medical Leave Act of 1993 (FMLA) and the leave balance requirements for the use of sick leave for

family care and bereavement purposes.

The Family and Medical Leave Act of 1993 entitles covered Federal employees to a total of 12 workweeks of unpaid leave (leave without pay) during any 12-month period for certain family and medical needs. There is no requirement that an employee maintain 80 hours of sick leave in his or her account in order to use unpaid leave under the FMLA. An employee may elect to substitute paid leave (e.g., annual or sick leave) for the unpaid FMLA leave, but only to the extent that such paid leave is permitted under current law and regulations.

The regulations permitting the use of sick leave for family care and bereavement allow most full-time employees to use a total of up to 104 hours of sick leave each leave year for these purposes. An employee may use 40 hours of sick leave for these purposes without any further requirements regarding the employee's sick leave balance. An employee may use up to 64 additional hours of sick leave if he or she maintains a balance of at least 80 hours in his or her sick leave account.

Family and Medical Leave - Employee on Leave Restriction

Q - My supervisor placed me on leave restriction 3 months ago and said I must call him at least 2 hours before the beginning of my shift if I cannot be at work that day. In addition, I must provide medical documentation for each unscheduled absence. Earlier this month I hurt my back, and my doctor certified that my condition qualifies as a chronic serious health condition under the Family and Medical Leave Act. My agency agreed to give me intermittent leave under the FMLA, but my supervisor says I must still follow the conditions of the letter of restriction. Is this legal?

A - When the need for leave is foreseeable, an employee must give 30 days notice of his or her intent to take FMLA leave. When the need for leave is not foreseeable, an employee must provide notice as soon as is practicable. In addition, an agency may require an employee on leave for a serious health condition to provide initial medical certification and recertification every 30 calendar days. If the health care provider has specified on the initial medical certification a minimum duration of the period of incapacity, the agency may not request recertification until that period has passed unless other conditions arise that permit the agency to require recertification more frequently. (See 5 CFR 630.1207(h)(2)(i).)

An agency's policies or procedures for notification of FMLA leave or medical certification may not be more stringent than required by OPM's regulations. If an employee who has been placed on leave restriction invokes his or her entitlement to FMLA leave, the agency must follow OPM's rules for notification and medical certification of FMLA leave.

Leave Earned in Two Part-Time Positions - Accrual and Use

Q - If an individual is employed concurrently in two part-time Federal jobs, how is leave earned and used?

A - In general, no employee may receive basic pay from more than one position for more than a total of 40 hours of work in 1 calendar week (5 U.S.C. 5533). A part-time employee earns annual leave and sick leave on a pro-rata basis. (See 5 CFR 630.303 and 630.406.) Therefore, an employee who works concurrently in two part-time Federal positions earns annual and sick leave on a pro-rata basis for the hours worked in each part-time position. In addition, only the leave earned in a given part-time

position may be used for absences from that position.

For example, if an employee who works 4 hours a day/20 hours a week in the first part-time position and 4 hours a day/20 hours a week in the second position is ill for 1 workday, he or she should be charged 4 hours of sick leave in the first part-time position and 4 hours of sick leave in the second part-time position.

Leave Earned in Two Part-Time Positions - Family and Medical Leave

Q - How many hours of leave is an employee working two part-time Federal jobs entitled to use under the Family and Medical Leave Act?

A - Under the Family and Medical Leave Act of 1993 (FMLA), a covered employee is entitled to use a total of 12 administrative workweeks of unpaid leave (leave without pay) during any 12-month period for certain family and medical needs. For a part-time employee, the 12 administrative workweeks of unpaid leave is calculated on an hourly basis and equals 12 times the average number of hours in the employee's regularly scheduled administrative workweek. An employee working two part-time positions may use only the amount of FMLA leave earned in each part-time position for absences from that position.

Leave Earned in Two Part-Time Positions - Military Leave

Q - How is the use of miliary leave affected by employment in two part-time positions?

A - Military leave is available to full-time and "part-time career" (PTC) employees only. Normally, PTC employees must work between 16 and 32 hours per workweek (5 U.S.C. 3401(2)). When an employee works two PTC positions, the amount of military leave that may be credited in each PTC position is in direct proportion to the number of hours scheduled for duty in each PTC position, not to exceed in the aggregate 15 days of military leave each fiscal year. However, military leave credited to one PTC position cannot be used for hours of absence from a second PTC position.

Leave Earned in Two Part-Time Positions - Sick Leave for Family Care and Bereavement

Q - How many hours of sick leave may an employee working two part-time Federal jobs use for family care or bereavement purposes?

A - An employee may use only the sick leave earned in a given part-time position for absences from that part-time position. The total amount of sick leave a part-time employee may use for family care or bereavement purposes in a leave year may not exceed the number of hours of sick leave normally accrued by that employee in that position during a leave year. To use this total amount, the part-time employee must retain in his or her account a balance of sick leave equal to twice the average number of hours in the employee's scheduled tour of duty each week in that position. (See 5 CFR 630.401(b) and (c).)

Leave Sharing - Disability Retirement

Q - Can an employee receive donated annual leave under the Federal leave transfer and leave bank programs if he or she has filed a claim for disability retirement?

A - Yes. An employee may apply for and receive donated annual leave while their application for disability retirement is being processed. Under the Federal leave transfer and leave bank programs, an employee who is experiencing a personal or family medical emergency and who has exhausted his or her available paid leave may request to become an approved leave recipient and receive donated annual leave. Once the disability retirement application has been approved by the Office of Personnel Management, the leave recipient may no longer receive or use donated annual leave beyond the end of the pay period in which the agency receives the notice of allowance of disability retirement.

Additionally, donated annual leave may be substituted retroactively for periods of leave without pay or used to liquidate a debt for advanced annual or sick leave granted on or after a date fixed by the agency as the beginning of the period of the medical emergency for which leave without pay or advance annual or sick leave was granted. Therefore, a leave recipient awaiting approval of his or her application for disability retirement may retroactively substitute donated annual leave for leave without pay or advance leave that was taken during the medical emergency.

Agencies should advise employees concerning the possible effects of substituting donated annual leave for leave without pay or advance leave on his or her retirement income. If an employee has had a substantial period of leave without pay, the period of time for which the donated annual leave is substituted can make a substantial difference in the accrued annuity payment to which the employee is entitled. This is because an annuity cannot commence until the day after the employee's last day of pay. If the donated annual leave is substituted for the leave without pay period just prior to the employee's separation from the Federal Government for disability purposes, the annuity will commence on the day after separation. However, if the donated annual leave is substituted for an earlier period of leave without pay (e.g., at the beginning of the medical emergency), the annuity may commence at an earlier time, the day after the last day in a pay status.

Employees should contact their agency personnel offices to receive additional information on the Federal leave transfer and leave bank programs.

Lump-Sum Payments for Annual Leave - Refund Upon Reemployment

Q - Is an employee required to pay back a lump-sum payment for annual leave when he or she is reemployed in the Federal Government?

A - Yes. Under 5 U.S.C. 6306, when an individual who received a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551 is reemployed in the Federal service before the end of the period covered by the lump-sum payment, he or she must refund to the employing agency an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period. The refund is deposited in the Treasury of the United States to the credit of the employing agency. The refund is based on the rate of pay used to compute the lump-sum payment; e.g., an employee who received a lump-sum payment based on a GS-7 special salary rate must refund the lump-sum payment based on that same pay rate, even if he or she is reemployed at a lower grade level that is not covered by special salary rates.

When an individual is reemployed in the Federal service in a position covered by the Federal leave system under 5 U.S.C. 6301(2), an amount of annual leave equal to the leave represented by the refund is recredited to the employee by the employing agency. When an individual is reemployed in the Federal service in a position not covered under 5 U.S.C. 6301(2), but is covered by a formal leave system, the amount of annual leave to be recredited to the employee will be determined using the rule for recrediting annual leave in 5 CFR 630.501(b).

Individuals who are reemployed in a position excepted from the Federal leave system by 5 U.S.C. 6301(2)(ii), (iii), (vi), or (vii) are not required to refund a lump-sum payment. Individuals who are reemployed in the Federal service after expiration of the lump-sum period and individuals who are reemployed in the Federal service in a position that does not have a formal leave system in which the employee's annual leave may be recredited are not required to refund the lump-sum payment. Individuals who are reemployed in a position excepted from the Federal leave system by 5 U.S.C. 6301(2)(x)-(xiii) must refund the lump-sum payment, and the annual leave will be held in abeyance until the employee transfers to a position in which the annual leave may be recredited or the employee later becomes eligible for a lump-sum payment.

A number of Comptroller General opinions on lump-sum payments may be found in the Civilian Personnel Law Manual, Title II--Leave, chapter 3, Lump-Sum Leave Payments.

Lump-Sum Payments for Annual Leave - No Waiver of Refund

Q - Can an agency waive a refund of a lump-sum payment for annual leave?

A - No. The Comptroller General has advised that a lump-sum payment for unused annual leave which is correctly and legally made to a Federal employee upon his or her separation from Government service may not later be considered an "erroneous" payment within the meaning of the statute authorizing waiver of erroneous overpayments of compensation (5 U.S.C. 5584). This is true even though the employee accepts another Federal appointment without any awareness that he will then become legally obligated to refund part of that lump-sum leave payment by accepting reemployment. (See B-200327, November 13, 1980.)

Sick Leave - Restoration of Sick Leave

Q - I forfeited sick leave in 1991 when I returned to Federal employment after a break in service of more than 3 years. Can I now have that sick leave recredited in light of OPM's new sick leave regulations, which remove the 3-year break-in-service limitation?

A - Previously, OPM's regulations in 5 CFR 630.502(b) provided that an employee was entitled to a recredit of sick leave if he or she was reemployed in another Federal position within 3 years after separation. On December 2, 1994, OPM issued final regulations that removed the 3-year break-in-service limitation on the recredit of sick leave for former employees who are reemployed on or after December 2, 1994. Sick leave may not be recredited to employees who were reemployed in the Federal service before December 2, 1994, and who previously forfeited sick leave under the former rule.

Sick Leave - Family Care and Bereavement

Q - In the use of sick leave for family care and bereavement purposes, what is the meaning of the phrase "to give care or otherwise attend to a family member?"

A - The Family Friendly Leave Act authorized the use of sick leave to give care for *or otherwise attend to* a family member having an illness, injury, or other condition which, if an employee had such a condition, would justify the use of sick leave by the employee. In other words, if the family member were an employee, and his or her condition would justify the use of sick leave, the employee's use of sick leave to care for the family member is justified.

OPM's regulations governing the use of sick leave for family care and bereavement purposes are consistent with the Act. The intent of the regulation is to allow an employee to provide physical care and other assistance to a family member, as appropriate. This may include, for example, an employee providing transportation and/or accompanying a family member to a health care provider's office or to a hospital or other health care facility, providing assistance during examination and/or treatment, and providing care and assistance during recovery. Under agency policies, managers and supervisors must use their judgment in administering the use of sick leave for family care or bereavement in a fair and equitable manner. It is not possible for OPM to regulate or specify the criteria for every situation that may arise.

- To Index of Leave Questions and Answers
- To Leave Administration Home Page
- To Compensation Administration Home Page
- To Web Site Index
- To OPM Home Page

Updated 14 March 2000